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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,827	07/24/2003	David Brierley	05579-00309-US	3768
23416	7590	01/25/2005	EXAMINER	
CONNOLLY BOVE LODGE & HUTZ, LLP P O BOX 2207 WILMINGTON, DE 19899			ZIMMER, MARC S	
			ART UNIT	PAPER NUMBER
			1712	

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/627,827

Applicant(s)

BRIERLEY ET AL.

Examiner

Margaret Einsmann

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 10-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 10-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
~~Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).~~
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/24/03
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_

### DETAILED ACTION

This action is in response to applicant's preliminary amendment canceling claims 1-9 and adding claims 10-24.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zeneca, LTD, WO 95/21958 in view of Zeneca, LTD, WO 97/04031. Zeneca discloses anthraquinone dyes having fluorosulfonyl groups and teaches the formation of applicant's claimed dye of formula 1 as its first example in WO 95/21958. See page 8 lines 1-12. Zeneca states at page 2 lines 53-41, "The dyes of formula (1), optionally in conjunction with other disperse dyes may be applied to the synthetic textile materials or fibre blends thereof by the methods which are conventionally employed in dyeing disperse dyes to such materials and fibre blends. For example, the dyes of Formula (1) in the form of an aqueous dispersion may be applied by dyeing, padding, or printing processes using the conditions and additives conventionally used in carrying out such processes."

Zeneca discloses the dyes of the claimed formula (II) and its use in mixtures to dye fiber materials in WO 97/04031. See abstract. Patentee discloses mixtures of the dyes of the claimed formula (II) on page 5, wherein the dyes claimed in applicant's

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narrowest claims, claims 23 and 24 are clearly disclosed. See also page 6 wherein mixtures of dye within the scope of the dye of formula II are used in mixtures. Patentee states on page 3 line 12 that the dye mixtures may be used "optionally in conjunction with other disperse dyes."

Both patents disclose dyeing the same kind of fiber materials under the same application conditions. Compare the types of fiber materials dyed and the process conditions in WO 95/21958 page 2 line 42 to page 3 line 18 to the process conditions in WO 97/04031 page 3 lines 16-37.

It would have been obvious to the skilled artisan to form a dye mixture as claimed, in order to dye or print polyester, acetate or other hydrophobic fiber materials, since the dyes as claimed are both disclosed as being used under the same process conditions to dye the same type of fiber materials, and additionally patentees state in both patents that the dyes may be used in combination with other disperse dyes. It is prima facie obvious to combine two compositions each taught by the prior art to be useful for the same purpose, in order to form a third composition which is to be used for the very same purpose. See *In re Kerkhoven*, 205 USPQ 1069, 1072. Regarding the percentages of each dye in the mixtures, it is within the expected skills of one having ordinary skill in the art to arrive at the optimum proportions of ingredients. See *In re Reese*, 129 USPQ 402 (CCPA 1961)." *In re Brown*, 173 USPQ 685, 688 (CCPA 1972).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret Einsmann whose telephone number is 571-

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272-1314. The examiner can normally be reached on 7:00 AM -4:30 PM M-Th and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

1/4/05

  
Margaret Einsmann  
Primary Examiner  
Art Unit 1751